

1	UNITED STATES DISTRICT COURT	
2	NORTHERN DISTRICT OF CALIFORNIA	
3	Before The Honorable Paul S. Grewal, Magistrate Judge	
4		
5	ADAPTIX, INC.,	)
6	Plaintiff,	)
7	vs.	) No. C 13-01774-PSG
8	CELLCO PARTNERSHIP d/b/a	)
9	Verizon Wireless,	)
10	Defendant.	)
11	ADAPTIX, INC.,	)
12	Plaintiff,	)
13	vs.	) No. C 13-01776-PSG
14	APPLE, INC., et al.,	) C 13-01777-PSG
15	Defendants.	) C 13-02023-PSG
16	ADAPTIX, INC.	)
17	Plaintiff,	)
18	vs.	) No. C 13-01778-PSG
19	AT&T, INC., et al.,	)
20	Defendants.	)
21	ADAPTIX, INC.	)
22	Plaintiff,	)
23	vs.	) No. C 13-01844-PSG
24	CELLCO PARTNERSHIP, et al.,	)
25	Defendants.	)

1	ADAPTIX, INC.	)	
		)	
2	Plaintiff,	)	
		)	
3	vs.	)	No. C 14-01259-PSG
		)	
4	DELL, INC., et al.,	)	
		)	
5	Defendants.	)	
		)	
6	ADAPTIX, INC.	)	
		)	
7	Plaintiff,	)	
		)	
8	vs.	)	No. C 14-01379-PSG
		)	
9	AMAZON. COM, INC., et al.,	)	
		)	
10	Defendants.	)	
		)	
11	ADAPTIX, INC.	)	
		)	
12	Plaintiff,	)	
		)	No. C 14-01380-PSG
13	vs.	)	C 14-01386-PSG
		)	C 14-01387-PSG
14	RESEARCH IN MOTION LIMITED,	)	
	et al.,	)	
15		)	
	Defendants.	)	
16		)	
	ADAPTIX, INC.	)	
17		)	
	Plaintiff,	)	
18		)	
	vs.	)	No. C 14-01385-PSG
19		)	
	SONY MOBILE COMMUNICATIONS,	)	
20	INC., et al.,	)	
		)	
21	Defendants.	)	
		)	

San Jose, California  
Friday, May 16, 2014

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
RECORDING

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1 Friday, May 16, 2014

10:00 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling Adaptix, Inc. Versus Cellco  
5 Partnership, doing business as Verizon Wireless, case number  
6 CV13-1774-PSG, and related cases. Matter on for case  
7 management conference.

8 Counsel, please state your appearances.

9 THE COURT: Who wants to start?

10 MR. FLANAGAN: I'll do this part, your Honor.  
11 Good morning, Mark Flanagan and Geoff Godfrey on behalf of  
12 Verizon Wireless.

13 THE COURT: Good morning.

14 MR. SELWYN: Good morning, your Honor. On behalf  
15 of Apple, Mark Selwyn and Craig Davis, and with us in the  
16 court is Sarita Venkat of Apple.

17 THE COURT: Good morning.

18 Don't be shy. We have a lot to get through.

19 MR. BLOCH: Good morning, your Honor. David  
20 Bloch, Winston and Strawn, for Dell.

21 THE COURT: Good morning.

22 MR. BLOCH: Morning.

23 MS. WINCHESTER: Good morning, your Honor. Amelia  
24 Winchester from Thompson and Knight, on behalf of AT&T  
25 Mobility and Sony Mobile Communications.

1 THE COURT: Good morning to you as well.

2 MR. PANKRATZ: Good morning, your Honor. Kurt  
3 Pankratz with Baker Botts, on behalf of Blackberry. And  
4 then the Blackberry case is also on behalf of AT&T.

5 THE COURT: Good morning.

6 MR. SWENSON: Good morning, your Honor. Jon  
7 Swenson from Baker Botts, on behalf of T Mobile. And also  
8 with me, I think on the phone, is Doug Kubehl on behalf of T  
9 Mobile, as well.

10 THE COURT: Good morning.

11 MR. KUBEHL (Telephonic): Good morning, your  
12 Honor.

13 MR. ERCOLINI: Good morning, your Honor. Mike  
14 Ercolini on behalf of Adaptix.

15 THE COURT: Mr. Ercolini, good morning.

16 MS. GILBERT: Good morning, your Honor. Jennifer  
17 Gilbert on behalf of Adaptix.

18 THE COURT: Good morning.

19 MR. CRUZEN: Good morning, your Honor. Rob Cruzen  
20 on behalf of Amazon.com, Inc.

21 THE COURT: Good morning.

22 MR. WILLIAMS: Good morning, your Honor. Fred  
23 Williams for HTC and AT&T.

24 THE COURT: Mr. Williams, good morning, to you as  
25 well.

1 MR. JENSEN: Good morning. Travis Jensen on  
2 behalf of AT&T Mobility.

3 THE COURT: Good morning, Mr. Jensen.

4 Anyone else here in the courtroom that needs to state  
5 their appearance? Does anyone on the phone wish to state  
6 their appearance who has not already been identified?

7 MR. HARDT (Telephonic): Good morning, your Honor.  
8 This is Jonathan Hardt --

9 MR. HUGHES (Telephonic): Yes, your Honor.  
10 Christopher Hughes for AT&T Mobility in the 1777 and 2023  
11 cases. And thank you for accommodating me.

12 THE COURT: Happy to do it.

13 Who else is on the phone?

14 MR. HARDT: Good morning, your Honor. This is  
15 Jonathan Hardt of Wilmer Hale, also on behalf of Apple.

16 THE COURT: Good morning, sir.

17 Anyone else on the telephone? If not, why don't we get  
18 started. Have a seat, at least try to have a seat if you  
19 can.

20 I have received and reviewed the joint case management  
21 conference statement and I appreciate the information. I  
22 particularly appreciate the pithy succinct presentation in  
23 the information. Let me begin, if I could, just by asking a  
24 few questions about how we're going to get arms around a few  
25 things.

1 First and foremost, I'm just working my way through the  
2 list of highlighted issues I have from that statement, my  
3 understanding is that Adaptix plans to file a motion for  
4 leave to amend its infringement contentions; Mr. Ercolini,  
5 is that correct?

6 MR. ERCOLINI: Yes, your Honor, that is correct.

7 THE COURT: And when -- when should I expect that  
8 motion to be on file?

9 MR. ERCOLINI: That should be on file today.  
10 We're still word from AT&T as to whether or not they'll  
11 oppose it, but we have an agreement with HTC -- HTC, Apple  
12 and Verizon that they are not going to oppose the motion.

13 THE COURT: Mr. Williams, do you want to speak to  
14 this?

15 MR. WILLIAMS: Your Honor, I have a call with AT&T  
16 shortly after the hearing and I hope it will not be opposed.

17 THE COURT: Okay. Certainly I would appreciate it  
18 if you could let me know if that's the case, so I can take  
19 at least one piece of paper off of my desk.

20 Next, my understanding is that there is some dispute  
21 regarding a stipulation that was entered back in March  
22 regarding discovery. This is, I guess, an Apple, Verizon  
23 and Adaptix issue, in particular; Mr. Godfrey, do you want  
24 to speak to this and then I'll hear from Mr. Ercolini as  
25 well?

1 MR. GODFREY: Good morning, your Honor.

2 THE COURT: Good morning.

3 MR. GODFREY: So on March 26th, to resolve a  
4 pending motion to compel that was brought by Apple and  
5 Verizon, Adaptix agreed to produce certain materials from  
6 related Adaptix proceedings, including among other things,  
7 deposition transcripts, witness statements, declarations and  
8 exhibits. And the details of that are set forth in the  
9 stipulation that has been filed with the Court.

10 In reviewing the materials that were produced, pursuant  
11 to that stipulation, it appears to Verizon and Apple that  
12 Adaptix is redacting testimony relying on confidentiality  
13 agreements between it and its licensees of the patents in  
14 suit to shield discovery of deposition testimony from its  
15 own witnesses back in 30(b)6.

16 THE COURT: So if I can stop you there, Mr.  
17 Godfrey, what you have -- at least in some transcripts, for  
18 example -- are statements, testimony from Adaptix witnesses,  
19 that have been redacted by Adaptix because presumably they  
20 identify or trigger some confidentiality concerns of a  
21 licensee? Is that right?

22 MR. GODFREY: It appears to be, your Honor. So,  
23 for example, in the transcript of Mr. Dodd's deposition,  
24 he's an Adaptix corporate representative, there are  
25 approximately 100 pages containing redactions, and it

1 appears to us, based on the index of exhibits and the index  
2 at the end, which is also selectively redacted, that some of  
3 that testimony concerns licensing in enforcement of the  
4 patents in suit. Same for the transcript of Mr. Vella, who  
5 is set to be deposed in the earlier transferred cases here  
6 this afternoon.

7 THE COURT: Okay, go on. I interrupted you.

8 MR. GODFREY: So Adaptix, in our view, should not  
9 be permitted to rely on confidentiality agreements with its  
10 licensees in order to shield from discovery testimony of its  
11 own witnesses concerning, particularly, licensing and  
12 enforcement of the patents in suit. And so we request that  
13 Adaptix be ordered to produce in unredacted form, on an  
14 outside counsel only basis, copies of this prior testimony.

15 THE COURT: Can I ask you, Mr. Godfrey, you  
16 mentioned this is testimony regarding Adaptix licensees,  
17 have the underlying licenses themselves been produced,  
18 pursuant to the protective order?

19 MR. GODFREY: They have, your Honor.

20 THE COURT: So you have those?

21 MR. GODFREY: Yes.

22 THE COURT: Okay. All right.

23 Mr. Ercolini, do you want to speak to these issues?

24 MR. ERCOLINI: Absolutely, your Honor. So, your  
25 Honor, respectfully -- or with respect to -- all due respect

1 to Mr. Godfrey, he's not correct as to the basis for the  
2 redactions. The documents are redacted because they are  
3 subject to a protective order in the ITC. Apple knows the  
4 situation very well because it has been in -- placed in  
5 exactly the same situation previously. So the documents  
6 that Verizon and Apple have right now are unredacted to --  
7 as to every single major party in that action, Samsung,  
8 Ericsson, Microsoft and Nokia. And those are really the  
9 only parties that they're concerned with.

10         Adaptix, pursuant to the stipulation that the parties  
11 filed, has sought consent from every single party who was --  
12 whose confidential business information was contained in  
13 those documents. We have received consent from all but, I  
14 think, three.

15                 THE COURT: So if I could stop you there, Mr.  
16 Ercolini.

17                 MR. ERCOLINI: Sure.

18                 THE COURT: What you're telling me is that in this  
19 ITC proceeding, the other parties to that proceeding have  
20 either consented, or information has been produced about  
21 those four parties without any issue. We're talking about  
22 third parties to the ITC proceeding; is that correct?

23                 MR. ERCOLINI: That's correct.

24                 THE COURT: Okay. Go ahead.

25                 MR. ERCOLINI: So right now the way it stands is

1 that Microsoft and Samsung have both given blanket consent  
2 for all -- for disclosure of all confidential materials  
3 produced in the ITC. So that means that the documents have  
4 been unredacted. We've actually gone through several rounds  
5 of redactions, based on the consents we've been able to  
6 achieve. But right now they're unredacted in their entirety  
7 for Microsoft and Samsung. Nokia has not given blanket  
8 consent, so there is still the issue of Nokia's confidential  
9 business information, but it's not a large amount. Really  
10 the most confidential business information is that of  
11 Ericsson, it's that of Samsung and it's that of Microsoft.  
12 And Verizon and Apple both have that.

13 The other parties --

14 THE COURT: Has Ericsson raised any issue?

15 MR. ERCOLINI: Ericsson has actually provided  
16 consent for Verizon to view the material, but not for Apple.  
17 So we've actually done two rounds of redactions for that.  
18 We've actually gone through the same procedure with AT&T and  
19 HTC in order to produce these documents to them. So we've  
20 done an enormous amount of work in order to comply with the  
21 stipulation. We've complied with every aspect of it, and  
22 we've actually gone above and beyond, because we've produced  
23 several rounds of redactions based on the consents we were  
24 able to achieve beyond the deadlines of that stipulation.

25 THE COURT: So how would you propose to get past

1 this hurdle? It seems to me that under the terms of the  
2 stipulation, the parties have some obligation -- you have an  
3 obligation here to try to work through all of this. What is  
4 your proposal to work through it?

5 MR. ERCOLINI: My proposal is very simple. My  
6 proposal is that Verizon and Apple look at the documents  
7 that have been provided to them, because the documents  
8 reflect every consent that we've been able to obtain and --

9 THE COURT: Right, but their beef if it's the  
10 stuff that you haven't been able to get consent for that  
11 they want to look at. So how are we going to get to Nokia,  
12 how are we going to clear any of the other third parties  
13 that have not provided full consent yet? Because what I  
14 don't want is a situation where because some third party  
15 either -- through no fault of yours, maybe they're just  
16 jerking you around, maybe they're just not interest in  
17 helping out Apple, in this particular event -- but I don't  
18 want some third party delay to interfere with the production  
19 schedule in this case. So how would you work through that?

20 MR. ERCOLINI: I'm not entirely sure what the  
21 protocol is at this point. I think that when this situation  
22 came up with Apple and Samsung that Apple was -- sought  
23 permission from the ITC to disclose it in the district court  
24 cases. I think that's probably the best we can do.

25 THE COURT: Under the terms of the ITC protective

1 order, if this Court were to simply order you to produce it  
2 -- you don't care, particularly, one way or the other, you  
3 just want to comply with your obligations and I respect that  
4 -- would that solve your problem?

5 MR. ERCOLINI: I'm not entirely certain, your  
6 Honor. I would have to ask -- our counsel in Washington  
7 handled most of the ITC. They're probably more familiar  
8 with the protective order, but I can get back to you with an  
9 answer shortly.

10 THE COURT: All right.

11 Mr. Godfrey, do you want to speak to that?

12 MR. GODFREY: Please, your Honor. I'd like to  
13 address two points, your Honor. First, it was news to us  
14 that there's been a blanket consent provided by Samsung,  
15 because the copies of the deposition transcripts that we  
16 have, clearly have extensive testimony relating to the  
17 Samsung license, redacted. And so, Mr. Ercolini says go  
18 look at the documents, but I brought copies with me and it's  
19 redacted. So perhaps if he could provide Bates numbers  
20 after the hearing, or just reproduce the unredacted  
21 portions, that would be helpful.

22 With regard to your second point, your Honor, about  
23 where do we go from here. One thought for how we might  
24 address this would be if your Honor were to enter an order  
25 for Adaptix to produce, but set that production to be for a

1 date certain, perhaps two weeks from now, and then Adaptix  
2 would have time to notify the holdouts, NSN and others, to  
3 the extent there are, the holdout licensees, of that  
4 deadline and then if those licensees believe that the  
5 existing protective order is not sufficient to safeguard  
6 their confidentiality, they could come in and seek an  
7 additional protective order, or raise whatever other issues  
8 they may have.

9 THE COURT: Yeah. That thought occurred to me as  
10 well, that -- and that may be the right solution. The only  
11 question I had was whether -- well, I guess the place I  
12 would start would be with what the ITC protective order  
13 itself says, because I just don't have enough experience  
14 with that order, really any order like it from the ITC. It  
15 would seem to me that there very well could be language in  
16 that order which recognizes that if a district court orders  
17 production in some case, there's no violation, I'm just  
18 trying to maneuver through that.

19 What I'd like you all to do on this -- I don't have a  
20 live motion before me, so -- and what I do have is a  
21 stipulation that I was happy to see in the first instance.  
22 I'd like you to talk about whether you can get the Samsung  
23 related production squared away, and any other production  
24 squared away. It may just be it's a matter of pointing to  
25 the production and identifying Bates numbers.

1 I'd like you to also meet and confer on this issue of  
2 the ITC protective order, and to see if that -- there's a  
3 solution that I can provide, in terms of simply ordering a  
4 production and overcoming the hurdle in that way. If that's  
5 not an acceptable solution to the problem, then what I would  
6 suggest is perhaps Mr. Godfrey, you bringing a motion for  
7 the type of order you describe where I simply command it and  
8 set a date certain for production and I'll just take it up.  
9 It may not -- it may be that Adaptix doesn't particularly  
10 object to that, it's just everybody's trying to avoid  
11 incurring the wrath of the commission, and I can appreciate  
12 that.

13 All right. So do we understand how we're going to  
14 proceed, Mr. Ercolini?

15 MR. ERCOLINI: If I may just say one thing?

16 THE COURT: Go ahead.

17 MR. ERCOLINI: It will probably solve an issue  
18 here today, because Verizon is one of the holdouts. AT&T is  
19 also one of the holdouts to disclose their confidential  
20 business information. So if they would be willing to do  
21 that here today, I think we could solve it, as far as that's  
22 concerned.

23 THE COURT: Okay. Well, Mr. Williams, perhaps  
24 that's an issue you can raise on that same phone call?

25 MR. WILLIAMS: Yes, your Honor.

1 THE COURT: And, Mr. Godfrey, I'll confess, are  
2 you representing Verizon or Apple? I always get that one  
3 confused.

4 MR. GODFREY: Verizon, your Honor. And I'll  
5 represent that we already informed Adaptix in writing that  
6 Verizon consents to the production of this information.  
7 It's co-defendant --

8 THE COURT: It would be a little strange if you're  
9 objecting about getting the information to yourself. Okay.  
10 All right, well why don't we see if we can work that out.

11 Mr. Ercolini?

12 MR. ERCOLINI: Verizon has not consented to the  
13 production of the material to AT&T and to HTC and I don't  
14 believe that they have consented to it as to Apple.

15 THE COURT: Okay. Well work that out, and if you  
16 can't work it out, bring a motion and I'll deal with it.

17 All right, let's move onto the next issue I have. I  
18 identified in your papers, which has to do with scheduling  
19 of expert reports and disclosures. You seem to have a  
20 different opinion about what the deadlines are, and it  
21 occurred to me, can we just work this out this morning  
22 rather than resort to yet another motion? Who wants to  
23 speak to this? I'm speaking specifically of footnotes one  
24 and two on page six of the statement, Doctor Calyonnides. I  
25 apologize if I'm mispronouncing that name.

1 UNIDENTIFIED SPEAKER: Calyonnides, your Honor.

2 THE COURT: Calyonnides. Mr. Ercolini, what's the  
3 issue here? Is it just a matter of picking a date, or  
4 what's the problem?

5 MR. ERCOLINI: Well the issue is that the last --  
6 the last hearing that I believe we had on experts, your  
7 Honor allowed Adaptix an extension to produce its expert  
8 reports, because AT&T had objected to the use of Doctor  
9 Calyonnides for a number of weeks, therefore was not able  
10 to --

11 THE COURT: I understand. I remember that.

12 MR. ERCOLINI: -- give us confidential business  
13 information. Verizon is taking the position, and I believe  
14 Apple and HTC are both taking the position, that Doctor  
15 Calyonnides report are only due on the date that you set  
16 during that hearing, as to AT&T productions. The issue is  
17 that Apple's productions and HTC productions are ripe with  
18 confidential business information of AT&T, which would prove  
19 an obstacle for Doctor Calyonnides to view those documents.

20 We would submit that it would probably make sense to  
21 just move Verizon, as well, because the same defendants that  
22 are in the cases with Verizon are Apple and HTC, and  
23 obviously can't view those productions.

24 THE COURT: And what are those dates? Can you  
25 just give me a sense of the delta here?

1 MR. ERCOLINI: So, I believe that we said that  
2 they should fall due on the 7th of July for the opening  
3 expert reports, or all reports which the party --

4 THE COURT: Bears the burden of proof.

5 MR. ERCOLINI: Bears the burden of proof. Yes.  
6 And I think that the rebuttal reports are supposed to be due  
7 on August 11th.

8 THE COURT: So again -- what you're proposing is  
9 that -- I thought you just told me that there were actually  
10 two deadlines, applicable to two different defendants.

11 MR. ERCOLINI: Yes. Two sets of defendants. So  
12 AT&T -- the way the defendants' see it is that AT&T has one  
13 deadline, that's July 7th and August 22nd, and then the  
14 earlier deadline would be the deadline for Apple, HTC and  
15 Verizon.

16 THE COURT: And that earlier deadline is? I  
17 apologize, can you just remind me of that again?

18 MR. ERCOLINI: I'm actually -- I'm not certain,  
19 your Honor.

20 UNIDENTIFIED SPEAKER: June 27th, your Honor.

21 THE COURT: Okay. So we're talking about a  
22 difference of June 27th versus July 7th as one example?  
23 Okay.

24 Mr. Selwyn, go ahead.

25 MR. SELWYN: And your Honor, at the last hearing

1 we understood you set the deadline just for AT&T's report,  
2 but the defendants aren't here to quibble about a week.  
3 That's fine if we want to schedule all of the reports -- all  
4 of the opening expert reports for that same date. Our only  
5 request would be if we're going to move the infringement  
6 reports to July 7th we'd also move the invalidity reports to  
7 July 7th so that all opening reports are due the same day,  
8 all rebuttal reports are due the same day. But we have no  
9 problem if they want to extend it by a week.

10 THE COURT: Okay, well I appreciate that and it  
11 strikes me just as a matter of management it would just be  
12 easier to have deadline so that the people aren't confused.  
13 So it sounds like then the later opening deadline -- opening  
14 report deadline is going to be July 7th; am I right about  
15 that? And the later rebuttal deadline will be what?

16 MR. SELWYN: August 11th.

17 THE COURT: August 11th. Okay.

18 MR. SELWYN: So all opening reports would be due  
19 July 7th, all rebuttal reports August 11th.

20 THE COURT: Any objection to that, Mr. Ercolini?

21 MR. ERCOLINI: No objection.

22 THE COURT: All right. I think we solved that  
23 one.

24 Okay, the last issue I identified from your statement  
25 has to do with setting a further case management conference.

1 As I understand it, we have an initial trial scheduled to  
2 begin on February 9th of next year, and it strikes me as a  
3 good suggestion to set a further status conference sometime  
4 in the middle of September, just to see where we are and to  
5 work through who's going to go first, who's going to be  
6 tried together, who's going to be tried separately, all of  
7 those things.

8 Mr. Rivera, can you just identify a date sometime in  
9 the week of September 15th that would work for a status  
10 conference? Perhaps that Tuesday? Or the week after if  
11 that doesn't work for our schedule.

12 THE CLERK: Tuesday, September 23rd at 10:00 a.m.  
13 is available, your Honor.

14 THE COURT: All right. So let's plan to get back  
15 together on the 23rd, and among the issues I'd like to  
16 discuss, there may -- well, undoubtedly there will be others  
17 between now and then, but I would like to figure out who's  
18 -- how we're going to schedule these sequence of trials so  
19 that everybody's calendars get set, and most importantly  
20 mine, so that you don't lose the trial date that we need.

21 All right. Are there any other -- those are the issues  
22 I had. Are there any other management issues we can address  
23 this morning?

24 Mr. Godfrey.

25 MR. GODFREY: Very briefly, your Honor.

1 THE COURT: Sure.

2 MR. GODFREY: I just wanted to update the Court  
3 that in April Adaptix and Motorola filed a joint motion for  
4 dismissal of all claims in the 1774 case, and that motion  
5 has been granted. I wanted to advise the Court that Adaptix  
6 and Verizon, it's my understanding, are in agreement that  
7 the remaining claims against Verizon should likewise be  
8 dismissed, and we've been working together to prepare a  
9 joint motion for dismissal, which we're trying to get on  
10 file today. That hasn't happened, but we expect to have it  
11 filed with the Court shortly.

12 THE COURT: Okay, I'll look for that, and assuming  
13 you're in agreement, I'll probably sign it that same day.

14 MR. GODFREY: Thank you, your Honor.

15 THE COURT: Anything else I can help you with?  
16 All right, have a good morning. Thank you.

17 Mr. Rivera, whenever you're ready would you call the  
18 next matter?

19 THE CLERK: Calling David Trinidad(phonetic)  
20 versus Reach Media Group, LLC (phonetic). Case number CV12-  
21 4759-PSG. Matter on for status.

22 Please state your appearance.

23 MR. RICHMAN (Telephonic): Good morning, your  
24 Honor. Ben Richman on behalf of the Plaintiff, on the  
25 telephone.

1 THE COURT: Good morning. Is anyone else  
2 appearing here?

3 MR. PANKRATZ: Your Honor, I apologize. It's Mr.  
4 Pankratz on behalf of Blackberry. Will you be having a  
5 separate session, with respect to the later filed cases in  
6 our case management conference statement?

7 THE COURT: With apologies to the Trinidad  
8 parties, I appreciate that I did not address that issue. If  
9 you all are here, candidly, let's just take care of this  
10 now, rather than put things off. And I'll confess, I didn't  
11 even look to see on the related case docket what statement  
12 was filed and what issues were raised. So with that apology  
13 and introduction, why don't you tell me what issues,  
14 specifically, are there that you think that we need to  
15 address, other than getting the schedules fixed and all of  
16 that?

17 MR. PANKRATZ: Certainly, and I think there are  
18 four, and I'll try to be very brief.

19 THE COURT: Go ahead.

20 MR. PANKRATZ: The first --

21 THE COURT: The seats are still warm.

22 MR. PANKRATZ: And I don't think I'm going to be  
23 addressing all of them, but I'll jump right in. The first  
24 is with respect to the parties competing requests regarding  
25 what documents should be produced, and the defendants in the

1 Blackberry and the -- I'll call it the wave two California  
2 cases, there are six of them -- are basically asking that  
3 those same materials that Adaptix has agreed to produce in  
4 the Apple case, that they produce those in our case as well.  
5 That's what we're asking.

6       As I understand it, Adaptix has put in sort of a  
7 reflective request that any defendant in these six cases  
8 produce a set of materials that they've produced from the  
9 earlier cases. We're basically fine with that, but we have  
10 a problem that it's going to ask for production of a lot of  
11 stuff that's not relevant. And so we'd ask that any order  
12 on that front be limited to relevant materials, and I'll  
13 give you two specific examples.

14       THE COURT: Yeah, why don't you bring it into  
15 focus for me.

16       MR. PANKRATZ: The financial -- the biggest reason  
17 why we ask for that is because the products are  
18 fundamentally different across the cases and there is going  
19 to be highly confidential information, specific to each  
20 case, that we don't want a blanket order being forced to  
21 produce across all of the cases. Financial information is  
22 one of the biggest ones. If we've got -- if AT&T has  
23 financial information about Apple products, that should be  
24 produced in the Apple case, not the Blackberry case, and the  
25 same going the other way. Similarly, if AT&T has highly

1 confidential information about Apple's technical  
2 characteristics, they should produce those in the Apple  
3 case, but not the Blackberry case. Those are the two big  
4 issues we see, and it boils down to it should be materials  
5 relevant to the case.

6 THE COURT: All right. And, is it -- is it -- I  
7 may be quibbling over language, but is it an issue as much  
8 about relevance as it is about confidentiality? And I  
9 realize the two are related, but is it a concern you have  
10 that you don't want, for example, production to Apple of  
11 stuff that's really about you and you alone? Is that  
12 basically it? And vice versa?

13 MR. PANKRATZ: Yes. And really it is the  
14 confidentiality that is the biggest driver of that.

15 THE COURT: Okay. So you would then essentially  
16 ask that there be a restriction on that production. Okay, I  
17 think I understand the situation. Let's take these up one  
18 at a time and then we'll march through these.

19 Mr. Ercolini, do you want to speak to that one?

20 MR. ERCOLINI: As to the production of AT&T  
21 materials across, or --

22 THE COURT: Yes and higher order issue of whether  
23 we're talking about AT&T or Apple -- Blackberry.

24 MR. ERCOLINI: So there -- I guess there are a  
25 couple of issues. The first thing I wanted to address is

1 the materials that were produced pursuant to the stipulation  
2 in the Apple and Verizon matters. Adaptix spent weeks  
3 redacting these materials. It's been enormously difficult  
4 to do, yet it's thousands of pages you have to go through to  
5 redact, based on the permissions that are granted. What we  
6 would say is that we'd hope that if we could get, you know,  
7 some sort of an order whereby we'd have to produce them, or  
8 if we could get an agreement from the ITC that we could  
9 produce them, we're more than happy to turn these materials  
10 over, but the thought of going back and redacting these  
11 based on permissions that we're able to get for six other  
12 defendants, is probably going to be more than we can handle.

13 THE COURT: So it sounds like whatever solution we  
14 adopt, with respect to this issue we just talked about in  
15 the last matter, would effectively solve the problem here,  
16 is that --

17 MR. ERCOLINI: Yes. Absolutely.

18 THE COURT: All right. So then let's deal with it  
19 in that same way, however that works out. I am -- in case  
20 you haven't figured it, I'm very comfortable just issuing an  
21 order, but I don't want to step on the ITC's toes, so  
22 however we figure that one out, let's apply it here and I  
23 think that will solve the problem.

24 MR. ERCOLINI: Okay. As to relevancy of the  
25 documents across the cases. Defendants have repeatedly

1 taken the position that all Adaptix documents, regardless of  
2 the patents in suit, are relevant across all of the cases  
3 and therefore must be produced across all of the cases. We  
4 think that the same should hold true for defendants. We are  
5 willing to grant defendants, to the extent that there's  
6 highly sensitive confidential business information of  
7 manufacturers who are not in these cases, to not be  
8 produced, but we would say that everything that AT&T has  
9 produced in the other cases, including the base station  
10 cases, should be produced here, just for the sake of  
11 efficiency. It's going to be enormously difficult, given  
12 that AT&T has different counsel in every case that they're  
13 in for every manufacturer, to coordinate their productions  
14 and to make sure that we can have everything we need to go  
15 forward for trial.

16 THE COURT: Well rather than having Adaptix  
17 produce AT&T documents produced in another case, wouldn't  
18 another way to skin this cat be to say that the burden is  
19 going to be on the defendants to either -- by subpoena or  
20 agreement, request those documents directly from each other?  
21 And then if one defendant or another objects to giving that  
22 material up, or believes it's irrelevant to the issues in  
23 dispute, they can raise those objections?

24 MR. ERCOLINI: Sure. I think so, your Honor.

25 THE COURT: I take it you wouldn't have a problem

1 with that?

2 MR. ERCOLINI: No, I would not.

3 THE COURT: Okay. All right. Who wants to  
4 respond here? Does that work, or would that work? I'm just  
5 trying to think of a way to --

6 MR. PANKRATZ: I think that will work. And we're  
7 not asking for Adaptix to produce the defendant's materials.

8 THE COURT: Okay.

9 MR. PANKRATZ: All we're asking is -- and I think  
10 he said that it's efficiency and they don't want to be  
11 burdened with it, your Honor, whereas the defendant is  
12 asking for that burden to be put on us to make the relevance  
13 calls and be efficient in how we do that, but produce the  
14 relevant materials in the relevant cases.

15 THE COURT: Okay. So would that -- but in terms  
16 of the procedure that I've described, or at least  
17 highlighted, will that work to solve that problem? That  
18 will give you, for example, an opportunity for Blackberry to  
19 withhold irrelevant documents and to raise objections to  
20 materials that, I don't know, Apple might want from you.

21 MR. PANKRATZ: Yes, I think that works, your  
22 Honor.

23 THE COURT: Okay.

24 MR. PANKRATZ: But there's one additional  
25 situation, which is AT&T is a defendant across many of these

1 cases.

2 THE COURT: They are.

3 MR. PANKRATZ: And AT&T themselves might hold  
4 confidential information that's relevant only to a  
5 particular product at issue in one case. And I think that  
6 the product's distinction is important. He made clear that  
7 the defendants think all of their material is relevant, well  
8 that's because all of their patents are interrelated. The  
9 products are -- they're distinct products. And so if AT&T  
10 has product information specific to a particular product  
11 that's highly confidential, they shouldn't have to produce  
12 that in the different cases.

13 THE COURT: Right, but in my -- in the method I  
14 described, AT&T would be able to raise that objection with  
15 -- well --

16 MR. PANKRATZ: I think that's right.

17 THE COURT: Adaptix has the information either  
18 way. The concern is that, for example, Blackberry might get  
19 information about an Apple phone and AT&T's possession has  
20 nothing to do with the Adaptix case against Blackberry,  
21 right?

22 MR. PANKRATZ: Correct.

23 THE COURT: So it seems to me that would allow  
24 Apple, in that situation, to raise the objection even though  
25 it's coming from AT&T. AT&T will presumably have to provide

1 notice to Apple, as it would in any other case, right?

2 MR. PANKRATZ: Yes.

3 THE COURT: Okay.

4 MR. PANKRATZ: I think that's right, your Honor.

5 I just wanted to define that. Thank you.

6 THE COURT: All right. Well what other issues can  
7 I help you with?

8 MR. PANKRATZ: The second issue is regarding  
9 inventor depositions, your Honor.

10 THE COURT: Go ahead.

11 MR. PANKRATZ: We've got six related cases in the  
12 wave two and Adaptix has proposed 12 hours total for each  
13 defendant across all cases -- or each inventor, rather,  
14 that --

15 THE COURT: And how many inventors -- I'm sorry --  
16 are we talking about?

17 MR. PANKRATZ: I don't know.

18 UNIDENTIFIED SPEAKER: I believe there are four  
19 inventors.

20 THE COURT: Okay. So 12 hours, four inventors?

21 MR. PANKRATZ: For each --

22 THE COURT: Or 12 hours each?

23 MR. PANKRATZ: For each inventor.

24 THE COURT: At least giving you that much, but you  
25 don't think that's enough.

1 MR. PANKRATZ: But across all of the cases. So  
2 seven defendants, less than two hours per defendant.  
3 Blackberry will get less than two hours for each inventor.

4 THE COURT: Assuming you get your pro rata share.

5 MR. PANKRATZ: Assuming we -- exactly. All we're  
6 asking is that we -- if we agree to that time limit, that we  
7 also be allowed to use those inventors testimony from prior  
8 Adaptix cases. It only makes sense. It's efficient -- same  
9 inventors.

10 THE COURT: So you're good with the limits, you  
11 just want to be able to use testimony from other cases in  
12 your case?

13 MR. PANKRATZ: That's correct.

14 THE COURT: Mr. Ercolini, is there any objection  
15 to that?

16 MR. ERCOLINI: Not really, your Honor.

17 THE COURT: All right, well I think we're done on  
18 that.

19 MR. ERCOLINI: I think it's okay.

20 THE COURT: What's next?

21 MR. PANKRATZ: Well I think I'm going to turn it  
22 over, on this one, I think -- the third issue I'm going to  
23 turnover to Mr. Godfrey.

24 THE COURT: Okay. Go ahead, Mr. Godfrey.

25 MR. GODFREY: Your Honor, when we had the CMC for

1 the earlier transferred cases about a year ago, we raised  
2 the issue of precluding Adaptix from redeposing Verizon and  
3 AT&T employees who had been deposed in other Adaptix  
4 litigations. We seek to do the same thing here. We ask  
5 that the Court enter the same order so that Adaptix cannot  
6 redepose witnesses of Verizon, AT&T and now also in these  
7 cases T Mobile, another carrier, if those individuals have  
8 been deposed elsewhere. We think that because the cases  
9 involve the same patents, and the infringement allegations  
10 are based on the same industry standard, that it's  
11 appropriate to place the burden on Adaptix to show good  
12 cause before redeposing a witness, as opposed to placing the  
13 burden on the carriers to come in and seek a special  
14 protective order each time Adaptix notices a duplicative  
15 deposition.

16 THE COURT: And I'll confess, my vague  
17 recollection -- my recollection is vague, that's the  
18 confession -- my recollection is that in the earlier cases I  
19 did place the burden on Adaptix to establish good cause to  
20 take the additional depositions, correct?

21 MR. GODFREY: Exactly, so --

22 THE COURT: You're just looking for the same rule  
23 again?

24 MR. GODFREY: Exactly the same order.

25 THE COURT: Okay. Mr. Ercolini, how about this

1 one?

2 MR. ERCOLINI: Actually, I'm not entirely certain  
3 that's the case, your Honor.

4 THE COURT: Okay. Tell me where you think I got  
5 it wrong.

6 MR. ERCOLINI: I think that the -- I think that  
7 the proposal is that we don't get to take any depositions in  
8 these cases of Verizon and AT&T.

9 THE COURT: Well I'm not about to impose that kind  
10 of restriction. What I hear Verizon proposing, along with  
11 others, is a good cause requirement that if you can show me  
12 that you need to go take that same person again, I'll give  
13 it to you. But absent that good cause, we're not going to  
14 have the same person deposed multiple times. Is that  
15 unreasonable? Forget about what they think. What do you  
16 think and what do I think?

17 MR. ERCOLINI: I think that this -- these cases  
18 involve entirely different manufacturers. We haven't taken  
19 any discovery. These cases were filed two years after those  
20 cases. Adaptix has already agreed to consolidate its  
21 depositions across -- ND Cal and Texas cases, which was a  
22 pretty big concession. I think that we clearly have no  
23 intention of wasting the Court's time, wasting the  
24 defendants' time or their employees, but requiring us to  
25 seek good cause every time we need to depose someone, where

1 we haven't even taken any discovery, I think is probably  
2 abridge too far. You have my word that we would absolutely  
3 not take advantage of the situation and we would not depose  
4 anyone unnecessarily.

5 THE COURT: Well I'm hesitant to articulate the  
6 good cause standard, because then you're going to come at me  
7 with a bunch of case law every time we have a fight about  
8 this. I don't begrudge you that part, but what I'm trying  
9 to say is I see no reason to let this issue go unaddressed  
10 and then confront it in 20 different fights down the road.  
11 I am convinced that as a default, there should not be a  
12 further deposition of a witness and that transcript should  
13 be used -- usable I should say -- in these later cases. But  
14 if you can't work it out, and I strongly urge you to work  
15 out, I will hear a request, and when I say "good cause" or  
16 "overcoming the presumption" I'm going to apply the liberal  
17 standard. So if you can show me some delta, Mr. Ercolini,  
18 I'll grant you, but I'm going to put the burden on you to  
19 show me that delta after you've met and conferred with the  
20 other side. Okay.

21 MR. ERCOLINI: Thank you.

22 THE COURT: All right, what's next?

23 MR. GODFREY: Finally, the issue, your Honor,  
24 relates to experts.

25 THE COURT: Go ahead.

1 MR. GODFREY: Adaptix has asked that if a  
2 defendant -- well, basically what defendants are asking for  
3 is that if an expert serves an expert report on one of the  
4 defendants, the defendants get to take that experts  
5 deposition. Adaptix is saying that if, for example, AT&T  
6 had an expert report by one of these guys in a previous  
7 case, they shouldn't get to depose them again in the current  
8 cases.

9 THE COURT: Okay, let me see if I can catch up to  
10 you on this one. So these are expert reports that are  
11 tendered by Adaptix?

12 MR. GODFREY: Yes, your Honor.

13 THE COURT: So these are Adaptix expert --

14 MR. GODFREY: Adaptix expert reports on  
15 infringement and validity.

16 THE COURT: Okay and what you're saying is, if  
17 they've got an expert, we'll call her Ms. -- Doctor Jones,  
18 and she opines on infringement by T Mobile, you want the  
19 right to depose Doctor Jones, even though she has no  
20 opinions at all about Blackberry?

21 MR. GODFREY: No, your Honor, that's not it.

22 THE COURT: So tell me where I've got it wrong.

23 MR. GODFREY: If Doctor Jones -- if AT&T is in a  
24 base station case, and Doctor Jones issues a report on the  
25 infringement by AT&T in that case, and then later now in the

1 Blackberry case Doctor Jones issues a report and she says  
2 AT&T infringes based on Blackberry products, AT&T should be  
3 allowed to depose that expert in the Blackberry case.

4 THE COURT: Okay.

5 MR. GODFREY: Just because Doctor Jones submitted  
6 an infringement report a year ago in an unrelated case, AT&T  
7 should not be prohibited from deposing that expert in the  
8 case in which the expert submits a new infringement report.

9 THE COURT: Okay. That sounds rather  
10 uncontroversial, so --

11 MR. GODFREY: It does, and that's maybe --

12 THE COURT: -- let me turn to Mr. Ercolini and  
13 ask, Mr. Ercolini, what's the objection with that? If the  
14 scenario we're talking about here is an expert report in a  
15 case against defendant number one, why wouldn't defendant  
16 number one be allowed to take that deposition?

17 MR. ERCOLINI: We're just trying to avoid  
18 duplicative depositions. I mean the expert's time -- expert  
19 hours are fairly limited and we're just hoping not to have  
20 to do this over and over and over again. AT&T has -- will  
21 have deposed these expert witnesses on the same patents in  
22 suit over and over and over again.

23 THE COURT: But we're talking about a separate  
24 case, right? And a separate product, right?

25 MR. ERCOLINI: Yes, your Honor.

1 THE COURT: Okay. So I'm going to allow that  
2 deposition to be taken if you want to, but I see no reason  
3 to restrict that.

4 MR. GODFREY: Thank you, your Honor.

5 THE COURT: All right. Are there any other --  
6 anything else?

7 MR. ERCOLINI: Yes, your Honor.

8 THE COURT: Mr. Ercolini, go ahead.

9 MR. ERCOLINI: Adaptix would like the same  
10 limitation on Adaptix's witnesses that Verizon is seeking on  
11 its own witnesses, and especially with regard to the parties  
12 who are defendants in the other cases in Texas. They will  
13 have deposed these witnesses, by the time we probably get to  
14 these depositions, three or four times, using the same  
15 counsel for the same party. We're saying, for now, to the  
16 extent that they are -- they are parties in the other  
17 actions and they share counsel with co-defendants in those  
18 actions, that they should cooperate to avoid redundant  
19 depositions. Meaning that, in particular, AT&T is a party  
20 to several actions in the eastern district of Texas. One of  
21 those is a case -- set of cases involving base stations.  
22 AT&T will depose the inventor of those base stations, but it  
23 will also depose several other witnesses who are former  
24 Adaptix employees. Baker Botts is counsel for AT&T in those  
25 cases. Baker Botts is also counsel for T Mobile and AT&T in

1 these cases, as well as Blackberry. We're just hoping to  
2 avoid having to produce these witnesses three or four times  
3 over, because it's already looking that way.

4 THE COURT: Can I ask you, Mr. Ercolini, without  
5 holding you to a precise number, give me a rough sense of  
6 how many witnesses we're talking about that are going to be  
7 implicated by this. Two, ten, 100?

8 MR. ERCOLINI: Up to ten, maybe 12.

9 THE COURT: In that range.

10 MR. ERCOLINI: Yes.

11 THE COURT: All right. Do you want to respond?

12 MR. PANKRATZ: I will, your Honor. And I'll  
13 admit, I'm relatively new to this case, compared to a lot my  
14 patriots here.

15 THE COURT: Me too, but go ahead.

16 MR. PANKRATZ: But I am at Baker Botts and I do  
17 have partners and colleagues who have been working on this  
18 case for quite awhile. I represent Blackberry. We're new  
19 to this case. It sounds, from what he's saying, that  
20 because I'm at Baker Botts I should somehow be prevented  
21 from coming in on Blackberry's behalf and taking depositions  
22 of Adaptix witnesses. That, to me, makes no sense and it's  
23 completely unfair.

24 THE COURT: Well the firm -- the firm exclusion  
25 makes little sense to me. But what I hear is a slightly

1 different point from Mr. Ercolini, which is if the party has  
2 participated in a deposition of these individuals before,  
3 unless you can show the same good cause -- or meet that same  
4 standard, there's no reason to have to do this again and  
5 again, right?

6 MR. PANKRATZ: I think so, but I'm not sure that  
7 makes practical sense here. Because, again, it's different  
8 products at issue. So there are fundamentally different  
9 issues going on. We're not going to be spamming these guys  
10 with deposition requests, and to the extent we do depose  
11 these folks, it's going to be coordinated. We've got  
12 limits, right? We can't just go after the same guy over and  
13 over again, and the defendants will be forced to split that  
14 time up across the days. So to say that I couldn't -- one  
15 of these attorneys couldn't put on an AT&T hat and ask a  
16 couple questions, I just don't think make sense. The  
17 federal rules are going to limit, and the rules that -- the  
18 limits on hours that we've put in are going to limit how  
19 much time we can spend with these folks. There shouldn't be  
20 a limit on which attorney from the defense group gets to ask  
21 the questions.

22 THE COURT: Okay. Well I suspect --

23 MR. KUBEHL: Your Honor?

24 THE COURT: Yes. Go ahead, is that -- who's  
25 speaking?

1 MR. KUBEHL: Hello, your Honor. Doug Kubehl.

2 THE COURT: Mr. Kubehl, go ahead.

3 MR. KUBEHL: I represent T Mobile here today. I  
4 just want to make a couple of points. One of the witnesses  
5 that we're talking about is Doctor Liu, who is the chief  
6 technical advisor for Adaptix. In the base station case,  
7 we've got his deposition scheduled. The base station case  
8 involves five patents that are not at issue in this case.  
9 So T Mobile, Ericcson and AT&T will be taking Doctor Liu's  
10 deposition on the week of June 16th, just before the close  
11 of discovery in this case, on issues relating to those five  
12 patents that are at issue in that case, and what Adaptix has  
13 proposed is that T Mobile and AT&T should be made to take a  
14 deposition of him on the two patents at issue in this case -  
15 - two different patents -- in a case where we've not  
16 represented any company on these patents before, and we  
17 don't have document productions in the cases. That's one  
18 example of just sort of if -- it would be strange for us to  
19 come and have to show a good cause to take Doctor Liu's  
20 deposition in this case, regarding two different patents.  
21 What we're trying to avoid here is some sort of a blanket  
22 rule where we have to come and show good cause, even in a  
23 situation like that.

24 The second point I'd make is, what Adaptix is trying to  
25 do also is, they want to avoid duplicative testimony, and

1 we're all for that, but at the same time, they don't want us  
2 to be able to use any of the transcripts from the other  
3 cases. So these third party witnesses, for example, former  
4 employees depositions that have been taken, to the extent we  
5 can reuse that testimony in these cases, we're very happy  
6 not to burden those third parties with additional  
7 depositions, but if Adaptix is going to take the position  
8 that those are inadmissible in this case because they  
9 weren't taken in this case, well then we'd have no choice  
10 but to take those again.

11       So what we'd rather do in situations like that is if  
12 it's a third party where everybody has had a fair  
13 opportunity to ask their questions, to the extent we can  
14 reuse those transcripts, we'll try to do that. If there's  
15 some good cause to have to go in, we can deal with it at  
16 that point. But there ought to be reuse of transcripts in  
17 this case, at least. And that's the incongruity that we're  
18 seeing here that they want to limit ability to take  
19 depositions and at the same time prevent us from using  
20 former testimony.

21       THE COURT: Let me speak to you to those issues.  
22 On the first issue, again, I don't think it's a high bar,  
23 but I do think it's only fair that I apply that same  
24 standard and framework on both sides, so -- and there's an  
25 intermediate step here that I'm hoping will take care of

1 99.6-percent of the issues, which is, you're to meet and  
2 confer before you bring a motion to the Court, and with the  
3 guidance I've given you here this morning, I hope you  
4 understand that if we're talking about different patents,  
5 different products, a delta that's measurable and  
6 identifiable, I'm going to grant the motion and if I have to  
7 deal with the motion when it's so clear, I'm not going to be  
8 particularly thrilled about that and I won't hesitate to  
9 shift fees and do all of the other fun things that courts  
10 get to do.

11 As to the second issue, let me ask Mr. Ercolini, are  
12 you objecting to the reuse of third party transcripts?

13 MR. ERCOLINI: No. I thought that we had already  
14 -- we had already --

15 THE COURT: So no more again, Mr. Ercolini. I  
16 appreciate your apathy and succinct resolution of that  
17 issue.

18 All right so I think we've addressed that one. Are  
19 there any other final issues we can address? Okay --

20 MR. BLOCH: Your Honor?

21 THE COURT: Mr. Bloch, go ahead.

22 MR. BLOCH: And I'll be brief, but the situation  
23 with Dell is slightly different. Dell is not a party to any  
24 of the prior cases and its damages in this case, as we've  
25 indicated in our little separate section, are very very

1 modest. I mean this is a tiny little case that ought to  
2 just, frankly, go away. There's a dispute over whether the  
3 plaintiff is going to produce its damages computations. As  
4 to Dell, that's the whole case, and it's really simple, and  
5 we all know from the other cases, which Dell is not a party  
6 to, but we understand what's going on, we had Motorola, we  
7 all know what the calculations are supposed to be. We all  
8 know that they're computing damages on a per unit basis.  
9 There's really no reason not to produce that number,  
10 especially as to Dell, when the numbers are so small. Once  
11 that number is established, this is the case that, as to  
12 Dell, should simply disappear. Dell, of course, having had  
13 nothing to do with the other cases, we're looking at a  
14 totally clean slate for discovery, so the cost to Adaptix  
15 are much worse than for everybody else. So we would just  
16 ask again, as we did in our papers, let's get that damages  
17 computation. There's no need to worry about attorney's fees  
18 or any of that. You're certainly not claiming attorney's  
19 fees against Dell in this case.

20 THE COURT: Well what would you have, Mr. Bloch,  
21 an early damages report served that commits to a number at  
22 this point?

23 MR. BLOCH: That would be great.

24 THE COURT: I'm sure it would be, but how -- I  
25 mean realistically what you're asking for -- I mean this is

1 the initial case management conference. We've all been  
2 trying to figure out how to do damages discovery in a saner  
3 way. Give me some specifics here. What would you -- are  
4 you prepared to produce a damages report of your own?

5 MR. BLOCH: Yes. Absolutely.

6 THE COURT: Within 30 days?

7 MR. BLOCH: Willingly. You know, we're talking  
8 about numbers in the three to four to five figure range, at  
9 the very outside. The number of products sold by Dell that  
10 are accused here is under 10,000.

11 THE COURT: Units?

12 MR. BLOCH: Units. That's right. And if we're  
13 talking pennies per unit, or maybe under 100,000 -- but it's  
14 pennies per unit. We're talking about a number that should  
15 be between 3,000 and 30,000, if prior calculations hold. So  
16 it seems to be as to Dell, we should think about a  
17 streamline way to get that issue taken care of, and at that  
18 point nobody is going to trial over \$22,000. It's  
19 irrational.

20 THE COURT: Well perhaps an alternative to this  
21 might be an early mediation. Isn't that the solution here?  
22 Rather than putting all of you to the expense of producing  
23 -- even the simplest -- I know the damages experts -- even  
24 the simplest report is going to cost you more than that,  
25 right?

1           MR. BLOCH: We would consider a separate track for  
2 Dell on something like that.

3           THE COURT: What do you think, Mr. Ercolini?

4           MR. ERCOLINI: I don't think we'd have an issue  
5 with that.

6           THE COURT: Okay. I think that's the solution  
7 here. I mean through the mediation, I think we can secure  
8 the information in order to get to a resolution. I'll leave  
9 it to you all to workout the details, but if it's useful, my  
10 guidance here is I want you to try to figure out either a  
11 private mediator, or one of our panel members, or even a  
12 magistrate judge, if necessary. And let's get that  
13 scheduled quickly.

14          MR. BLOCH: That sounds great, your Honor. Thanks  
15 very much.

16          THE COURT: All right. Let's handle it that way.  
17 Any other issues? All right. Now I think we've  
18 covered it. Have a good morning.

19          (Proceedings adjourned at 10:44 a.m.)  
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



Echo Reporting, Inc., Transcriber

Tuesday, June 3, 2014